37. An IXC still must pay access charges to the originating and terminating LECs in connection with fraudulent long distance calls, even though it does not get paid for the fraudulent calls. The IXC would be in a much better position to prevent or at least limit such illegitimate calls if it knew that the calls were forwarded and that customer remote access to the call forwarding feature were available.

38. The RBOCs determine the outcome of fraud-related issues deliberated by the Toll Fraud Prevention Committee (TFPC),[28] an industry forum under the ATIS-sponsored CLC. The TFPC's mission is to develop industry-wide mechanisms for preventing telecommunications fraud. The RBOCs dominate the TFPC decision process, dilute the effectiveness of recommendations, and often do not implement the recommendations that they themselves have approved. Pacific Bell provides a typical example of making TFPC agreements but not following through with implementation. Pacific Bell states that it is still studying the "feasibility"[29] of two TFPC-approved Call Forwarding recommendations. It is disturbing that Pac Bell did not study the feasibility of the recommendations before they were finalized, and then proceed with implementation.

---

[28] Id. at ¶¶ 8-9.

[29] Pacific Bell Reply Comments at 58.

39. Pacific Bell has suggested that IXCs upgrade their networks to control fraud that is caused by Pacific Bell defective access products.[30] Pac Bell's suggested fix involves using non-uniform RBOC information, which in itself presents a very onerous and possibly impossible scenario. Even if the Pacific Bell proposal would work, it would only be effective as long as the RBOCs provide switch-based call forwarding service. It should be noted that RBOCs are rapidly moving to an Advanced Intelligent Network (AIN) platform structure for such services, which, by nature, is not totally switch-based. It is my understanding that the AIN plan uses the existing SS7 systems and does not include a means to inform an IXC that a call has been forwarded. So, even if we could get Pacific Bell's proposal to work, it would likely be nullified by AIN.

40. U.S. West provides another typical example of the unwillingness of RBOCs to address fraud problems when other entities bear the cost of the fraud. The Arizona Public Utilities Commission staff recommended that U.S. West modify its call forwarding service tariff proposal, implement the relevant TFPC recommendations, and indemnify IXCs for any access charges associated with fraudulent calls and their call forwarding product. US West simply withdrew its tariff proposal. Rather than take responsibility for preventing the related fraud or even compensating the victims of such

[30] Id. at 60.

fraud, they picked up their marbles and went home. A similar pattern was followed in New Mexico.[31]

CONCLUSION

41. The RBOCs and USTA reply comments fail to rebut MCI's demonstration that they dominate the industry standards and fora processes. There are many others in the industry that are becoming aware of RBOC dominance of industry, regulatory, standards and forum processes, as well as the related anti-competitive effects. The RBOCs have a very well organized cartel for the purpose of influencing industry forum and standardization processes. Further, the RBOC-owned and controlled Bellcore TR/GR requirements process effectively provides the RBOCs a private standards-setting mechanism. Also, they often do not implement the solutions that they agree to in industry and standards forums. The RBOCs' dismal performance in the area of fraud prevention is another illustration of their misuse of their dominance over the local network and the standards process.

42. Because of the RBOCs' perversion of the industry standards process, the Commission cannot realistically expect industry fora to develop effective ONA or other anti-discrimination safeguards. Without such safeguards, structural

[31] Jordan Affidavit at ¶ 19.

separation cannot be eliminated, as the Ninth Circuit held.[32] Structural separation for RBOC provision of enhanced services is in the public interest and promotes fair competition. The forum and standards process will also be more equitable with LEC structural separation for enhanced services.

Further Affiant saith not.

Peter P. Guggina

Peter P. Guggina

Subscribed and sworn to before me this

5th day of April, 1996

NOTARY PUBLIC STATE OF TEXAS
NANCY J. TODD
Notary Public
State of Texas
Commission Expires 6-20-99

Nancy J. Todd

Notary Public

[32] California v. FCC, 39 F.3d 919, 930 (9th Cir. 1994).

APPENDIX A

Date: Sun Nov 05, 1995 5:03 pm CDT
Source-Date: Sun, 5 Nov 1995 16:39:00 EST
From: nML Comm. Daily
          EMS: INTERNET / MCI ID: 376-5414
          MBX: COMDAILY@cis.wdc.mci.com

TO: * Peter P. Guggina / MCI ID: 296-1556
Subject: nML Communications Daily 11/6/95 (1 of 2)
Message-Id: 62951105220326/0003765414DC3EM
Source-Msg-Id: <75951105213957/0003054374PJ3EM@MCIMAIL.COM>

MONDAY, NOVEMBER 6, 1995   VOL. 15, NO. 214

Today:

CHRISTIAN RIGHT OPENS NEW CYBERPORN CAMPAIGN: Internet and on-line defenders strongly oppose proposed changes in telecom bill backed by Hyde. (P. 1)

RHCs SAID TO THWART COMPETITION: CAP executives say CEOs support competition publicly, drag feet when rivals seek connections. Cartel accused of blocking legislation. (P. 2)

NETWORK AND AFFILIATES SHARPLY DISAGREE ON FCC RULES: Big 3 say networks aren't dominant. Yes they are, affiliates counter in opposing FCC plan to relax rules. SBA wants rules kept. (P. 4)

INTERNATIONAL MARKETS AWAIT CAPS: Europe and Latin America seen ready for U.S. partnerships. Financial advisers say MFS success clears path for other small companies. (P. 5)

TEE-COMM SELLS $51 MILLION IN STOCK TO FINANCE SATELLITE TV ventures Alphastar in U.S. and Expressvu in Canada. Says it's at 'disadvantage' in U.S. market because of late entry. (P. 6)

APPROVAL FOR ICO AND BIG LEO PHONES WILL COME SLOWLY, but it will happen eventually in most countries, Comsat Mobile executive tells McSat conference. 'No big rush' for approvals, he says. (P. 7)

Could 'Close Down the Net'

CHRISTIAN RIGHT ASKS STRONGER CYBERPORN CONTROLS

On-line community and free-speech advocates are gearing up to combat new proposal to restrict obscene or indecent material on on-line services accessible to minors. New campaign is being led by Christian Coalition head Ralph Reed, ex-Attorney Gen. Edwin Meese and others, and has backing of House Judiciary Committee Chmn. Hyde (R-Ill.). Proposed new language would impose criminal penalties for person who "knowingly communicates, transmits or makes available for communication or transmission... an indecent communication by computer to any person the communicator or transmitter believes has not attained the age of 18 years of age."

New proposal would toughen language on criminal penalties that Hyde added to telecom legislation (HR-1555) by including "knowingly" (rather than "intentionally") standard and by including indecent speech. Letter also showed difference between conservative community based on "family values" and economic conservatives, many of whom support language by Reps. Cox (R-Cal.), Wyden (D-Ore.) and White (R-Wash.) to protect service providers. Hyde's view is that those who put indecent or obscene material on on-line service or Internet should be held responsible, based on belief that service providers have ability to carry out such screening and aren't doing enough to prevent such access. Standard based on "knowing" principle is considered tougher than language now in bill that would require punishment if someone "intentionally" put material onto on-line service or Internet. Hyde believes there's no constitutional problem with restricting access and he would impose criminal penalties. Section sponsored by Cox, Wyden and White would remove liability for civil penalty from service providers.

In Oct. 16 letter to House Commerce Committee Chmn. Bliley (R-Va., and Senate Commerce Committee Chmn. Pressler (R-S.D.), 13 groups and individuals asked for tougher language and attacked Cox/Wyden/White proposal by saying: "While there is no perfect solution to the problem of computer pornography, Congress could not hope to solve this problem by holding liable only some who are responsible for the problem." They noted that Justice Dept. has prosecuted child pornographers who put material on America Online and said: "Thousands of individuals both in this country and abroad are regularly placing obscenity and indecency on the Internet." They said that if Congress protects service providers, "it is likely that most in this country who are trafficking in indecency to children or obscenity would continue to do so since the threat of prosecution would be minuscule, given the numbers of those currently involved in this activity." They said suggested changes wouldn't hold Internet access provider criminally liable for all illegal pornography on Internet or require them to check all communications. Access providers would "simply be required to avoid knowing violations of the law." Letter said technology "exists today for access providers, through a simple process, to target or flag and remove files containing objectionable material."

However, attorney Ronald Plesser, who works with several on-line clients, said there could be only one result if Christian Coalition proposal were adopted: "It would entirely close down the Net." He said that access providers and others who provide e-mail and other services would be prosecuted for content over which they had no control. Plesser said: "This is an outrageous attempt to shut down the Network as we know it today." Everyone wants to protect families, he said, but penalties should be applied properly.

Making similar argument, Leslie Harris, public policyrican Way, said in Nov. 3 letter to Bliley and Pressler that proposal endorsed by Christian Coalition, Phyllis Schlafly, Meese and others "would write an end to the promise of this vibrant new technology. Instead of empowering Americans to be authors and publishers, it will empower the government to surveil and censor the Internet." Harris said coalition proposal misunderstands role of service providers and of First Amendment, and said "knowing" standard would forse and others would have "chilling effect" and pointed out that indecent speech is constitutionally protected.

U S West Skewered

TELCO COMPETITORS ATTACK RHC LOCAL MARKET RESISTANCE

PALM SPRINGS -- Barriers erected by RHCs to prevent opening local telephone network should be used by competitive access providers (CAPs) to rally forces in stepping up competition with or without federal legislation, 4 CEOs said here Fri. at Asce. They said

resale agreements, like Ameritech-U.S. Network deal, might be short-term way to get into market, but RHC resistance made resale unlikely long-term solution. Growth in business will come from developing seasoned management team, offering broad array of services coupled with unparalleled customer service, officials said. "There's a lot of opportunity there," said Thomas Morrow, pres., Time Warner Communications. He said resistance from RHCs is encouraging CAPs to work harder to get into market.

U S West (USW), Ameritech and Southwestern Bell were singled out for repeated efforts to block network access. Darryl Ferguson, pres., Citizens Utilities, unleashed stinging attack on USW and at Chmn.-CEO Richard McCormick, for deciding to hold up access. "Richard McCormick made the decision to go slow, to hold up [CAP] companies and to not care a lot about their customers," Ferguson said. "It's a huge, serious problem." USW repeatedly has blocked action on Colo. PUC rulemakings, to further delay competitor entry, he said.

Morrow said Ameritech has thrown up similar roadblocks in Ohio, where TW filed to provide local service last year, but RHC has challenged every action of Public Utilities Commission (PUCO) from its jurisdiction to language in proposed order. "With Ameritech you get a big bear hug and after you let go you find a knife in your back," he said. He said he would rather face "obviously antagonistic" USW then deal with Ameritech. "It's all just great PR, but the knife's still in the back." TW expects it will still be waiting to provide all services in Ohio more than 2 years after filing application, he said.

Alliance of RHCs has created "cartel" to "slow roll" federal reform efforts, Craig Young, pres.-COO, Brooks Fiber Networks, said, although he joined with other panelists in endorsing need for legislation: "If we let this one slide, I don't know what the next one will look like." Others said legislation won't solve problems, but will help open markets in some way and spur industry to further growth driven mostly by entrepreneurial companies. He said states may be unable to handle new responsibilities spelled out in both versions: "I don't know if the states have the manpower to check for the pea under the pod" when LECs file tariffs.

Despite problems, Ferguson and Morrow said local market remains jewel in U.S. telecom industry, and reluctance of some RHCs to cooperate on opening markets or setting reasonable rates could be driving CAPs to work harder. "They may be doing us a favor," Morrow said. "I think the LECs are killing themselves. They're setting themselves up for a fall, and we're the ones who are going to give it to them."

Executives said they weren't especially interested in working out resale agreements with RHCs and other providers, citing low rates established by some companies and reluctance to make quick agreements. "It will be hard to make it a business based on the prices Southwestern Bell has set," said Richard Kolsby, pres., Metro Access Network of Tex. His company is looking at other options, including direct connections and some bypass to provide services. Market is ready, executives said, with residential and many business customers anxious to get new services incumbents can't provide. "They're tired of the lack of responsiveness from the local phone company," Kolsby said.

Alternative local carriers won't be able to build networks alone, and some alliances will be necessary, although Young stressed need to find partners who share same goal and vision rather than joining company that's moving on different part. IXC relationship is said to be key ingredient to providing alternatives, with frame relay, wireless and even PCS providers expanding opportunities for business. "You don't have to own everything to sell everything," Morrow said.

Hidden costs for CAPs are back office and infrastructure required to compete in local market and other "stuff customers will never see," Morrow said. Most companies began by providing bypass of LEC, but as full competitors they need full billing, database access for 911 and other calls, and labor-intensive operator-assistance services. Some work can be provided by subcontractors, but officials stressed danger of building bureaucracy that duplicates former Bell companies, and with it slow response time and other problems. Opening residential market, events, has become viable business option because LECs aren't giving customers service they want, Morrow said.

Critical need is for mature management team that works well together and sends common message to rank-and-file that company intends to compete and win in market, Ferguson said. Managers must be "tenacious" in battles with incumbent providers. Team needs to know how to "go slow but fast" in spending capital to build networks and services buts lack of new technology, represents major opportunity for CAPs.

ALTS Notebook...

ALTS doubled size of exhibition from year ago to include more than 36 exhibitors, and 80% of space for next year's conference already is sold out, Pres. Heather Gold said Fri. Exhibits included equipment suppliers, such as Alcatel, AT&T Network Systems, Ericsson, Northern Telecom and Siemens, which showed off new cellular phones and switches, and newcomers that are planning entry into local market. LinkUSA Senior Vp Kristi Feltz said long distance wholesaler plans major push to provide plain label services to CAPs in 1996; company sent large delegation of sales and marketing executives to show. Ericsson passed out 30 cordless phones to show off lightweight system that works as cordless in building or home and converts to cellular away from AXE switch.

Telecom legislation hasn't become "consumer competition" issue or part of constituent discussions as staff of House and Senate conferees move to daily and weekend meetings to resolve difference before year-end, Washington lawyers and Hill staffer said. Panelists said despite intense lobbying and media blitz, including Consumer Federation of America commercials on TV stations, constituents aren't raising issue when members return home. "Consumer competition argument is starting to emerge a little bit more," said Carol Ann Bischoff, telecom aide to Sen. Kerrey (D-Neb.): "It's important to keep the pressure on." Kerrey isn't member of conference committee. Panelists agreed conference probably won't come up with bill until Dec., perhaps not until first quarter next year. If issues remain unresolved in April or May, "bill won't happen," said Gary Slaiman, partner, Swidler & Berlin, Washington. He said Sen. Hollings (D-S.C.) holds key votes to stave off threatened veto. Among stumbling blocks that could delay action: "Back-end safety valve" after FCC and states set benchmarks for local entry "to make sure RBOCs play fair," said Thomas Cohen, pres., Davison, Cohen & Co. Debate over universal service also could delay action, even though universal service doesn't become post-law issue until checklist issues are settled, they said. "This bill is by no means an end point," Cohen said. "It's a starting point for a lengthy process in which it's essential that all of you play." Gail Schwartz, Teleport Communications Group vp-govt. affairs, questioned process for cleaning up deficiencies in bill from ALTS' point of view: "Once they pass the checklist, we fear that they will seize the opportunity to delay the operational and economic benefits." Cohen said: "That's the 64-billion-dollar question. The goal is to do the best you can and make it better than it is today." He said that if bill falls short, industry can seek new laws to modify law in future, just as Cable Act has been modified. Slaiman said Justice Dept. role in revising market access isn't "dead issue" even though chief House supporter was excluded from conference. "It's still possible for them to do that, although as a political matter, the jury is still out."

In Place Since 1941

NETWORKS/AFFILIATES DISAGREE SHARPLY ON REPEAL OF RULES

Only Big 3 TV networks favored FCC relaxation of rules limiting their dealings with affiliates, in comments on rulemaking last week. Affiliates, individually and in groups, opposed any major changes, as did several nonbroadcast organizations such as Small Business Administration (SBA). ABC, NBC and CBS claimed that they're no longer dominant over affiliates. Yes, they are, more than ever, affiliates countered in asking that rules be kept. Rules were adopted for radio in 1941 following Report on Chain Bcstg., which forced NBC to divest Blue Radio Network to ABC, then were applied to fledging TV industry in 1946.

INTV and chmn. of affiliate associations of Big 3 networks sent FCC joint letter urging that rules be kept, position they said was taken by "an overwhelming majority" of commercial stations. Network Affiliated Station Alliance (NASA) said restrictions are "essential rules that permit network affiliates effectively to serve their communities" and to maintain control over programming. NASA, which represents more than 600 affiliates of Big 3 networks, said "the assumption is demonstrably false" that balance of power has shifted from networks to stations, as networks maintain. Networks, freed from finsyn and prime-time access rule (PTAR) restrictions, "have become massive network-studio conglomerates that have the incentive and power to demand uniform clearance of network programming," said NASA. Post-Newsweek Stations told FCC it "fully supports" NASA position. Group said it "adamantly disagrees" that balance of power has shifted to affiliates and that in fact network power over stations has grown "larger and larger."

SBA urged Commission not to relax rules "in order to prevent the networks from further dominating affiliates." Coalition of 5 major station groups said right-to-reject network programming is "cornerstone protection" for affiliates, and option time is "essential" for licensee to maintain control of programs. Group of 5 other licensees maintained that networks' power over affiliates "if anything, has been enhanced" by changes in video marketplace.

Changes taking place in TV industry haven't had impact on long-standing relationships between networks and affiliates and thus most of existing rules should be retained, INTV said: "There has been no diminution of network power [and] new vertically integrated network/studio combinations are becoming commonplace... Because the networks will have a financial interest in network programs as well as programs in syndication, there will be increased pressure to clear network-owned programs. As a result, network pressure on affiliates to clear programs will increase, not decrease."

AFLAC Bcstg. said changes proposed would impair affiliates' ability to "make programming decisions free of network interference." Sinclair Bcstg. reminded FCC that responsibility for licensees' programming "may not be delegated." Networks still possess "powerful economic leverage" over affiliates and don't need "additional advantages" that relaxation of rules would bring, Sinclair said. N.Y. Times Co. said it supports NASA position with proviso that networks should be permitted to sign exclusive contracts with affiliates.

Opposing relaxation of rules, Media Access Project said: "The

Commission seems willing to incur a significant cost to the public interest in exchange for illusory benefits [that] would seriously undermine" program diversity. Blade Communications said relationship between affiliates and networks has changed "from one of mutual cooperation to one in which the networks are aggressive and even hostile..." Rulesles should be kept because they restrain power of established networks to "inhibit" development of new networks.

New World said FCC "has continually attempted to micromanage ownership, control and bargaining power within the industry... Unless the Commission deregulates both sides of the network affiliate relationship at once, it risks fundamentally changing the local nature of the broadcasting industry." Reason for adopting rules in 1941 (diversicy objectives today," New World said. "The basic tension between networks and their affiliates has not changed... The overall fragmentation of the video marketplace has no effect on this equation." It said it's "particularly concerned" about proposal to eliminate dual network rule, which it said would cause affiliates to suffer "a competitive disadvantage that would be harmful to the industry as a whole."

Pappas Telecasting said "effect of this pieceir affiliates and the public interest." FCC must review network/affiliate rules "together and not ignore the totality of their impact... To tinker with these protections because of age alone is simply wrong," said Pappas. In

plea for retention of rules, Southern Bcstg. detailed its fight with ABC (which led to legal action) to retain ABC affiliation for WWSB Sarasota, Fla., when network switched from VHF to UHF affiliate in Tampa-St. Petersburg.

CBS said it "strongly supports" repeal of rules as no longer necessary because of "highly competitive conditions that now prevail. Rules are "ripe for review, amendment and, in most respects, for repeal," said ABC. "The rules impose costs on networking that undermine the strength of that system, and they do so at a time when other players in the video marketplace -- unfettered by the rules -- are taking a growing share of viewers at the networks' expense." ABC said reliance on antitrust laws is sufficient to protect public.

Said NBC: "The time has come for the Commission to stop micromanaging" relationship between networks and affiliates "in light of current market conditions, trends in the video marketplace and the degree of present and foreseeable competition... Broadcsast networks and their affiliates today stand as equal partners in an ongoing business relationship. Each is critically dependent on the other... Neither party dominates the relationship." Upheaval in affiliations, in which 68 stations have switched networks in last 18 months and networks have had to increase compensation by as much as 50%, is compelling evidence of the shift in network-affiliate bargaining power," NBC said.

Warner Bros. TV Network, calling itself "a newly minted, still fragile network," said now would be "worst of times" to relax restrictions on Big 3 networks. United Paramount Network said that if any changes are made, FCC must recognize differences between emerging and established networks.

APPENDIX B

America's Network

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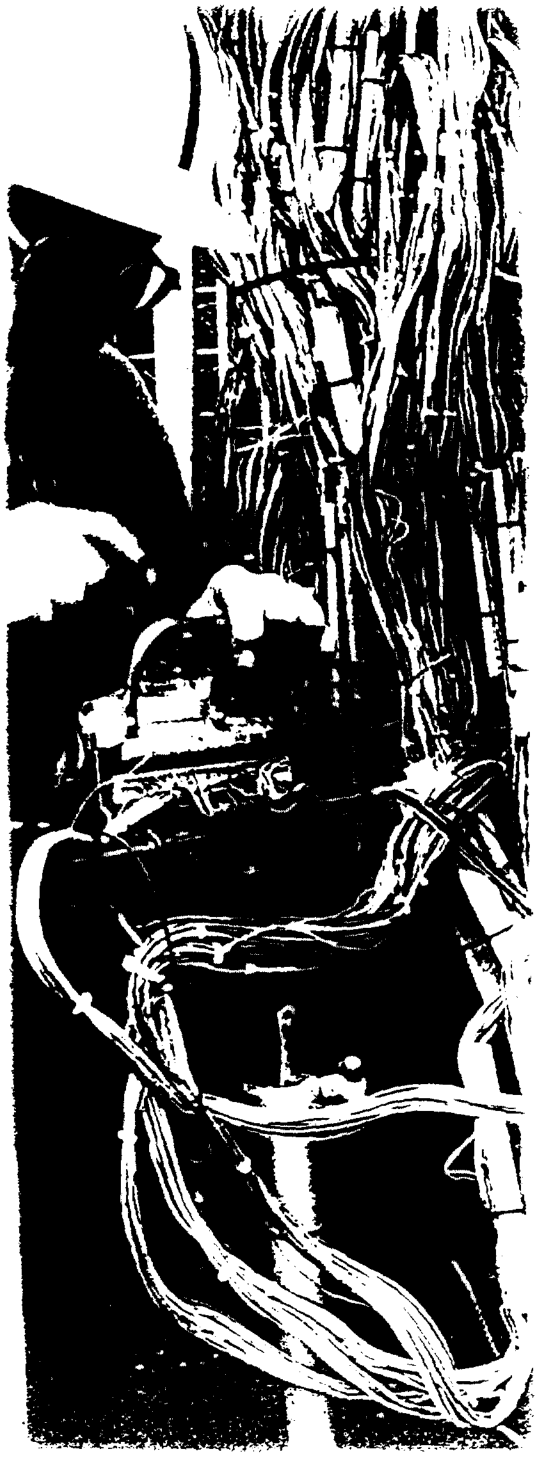
DEVIL IN THE DETAILS

Local Services Competition Has Arrived, Right? Wrong. Here Are Five Top Reasons Why Not.



FROM THE

EDITORS

TAKE THE RISK— IT'LL BE WORTH IT

There has been a lot of talk recently about the local exchange industry dragging its feet on providing competitors access to local switches. Local carriers reportedly are engaged in all kinds of blocking tactics; they've been accused of intentionally sending the wrong personnel to important meetings on interconnection and of making secret high-level decisions to hamstring deregulation.

If even half these stories are true, local exchange carriers are doing themselves—and their shareholders—a disservice. By trying to stall deregulation until some notion of a perfectly level playing field is achieved, the local exchange industry is losing precious ground in the race for larger future market share.

This market will be dominated by the best providers of consumer and business interactive services, not bandwidth. By focusing on the economics of transmission without devoting at least an equal amount of attention to content and services, the local exchange industry is playing a dangerous game on behalf of its shareholders.

If the broadcasting model is any guide, local exchange carriers will continue to lose market share to competitors. But it won't be because they have sacrificed transmission rights of way. It will be because more progressive service providers have tapped into a market appetite for innovative features and services.

The local exchange industry should stop dragging its feet now on addressing the details of providing competitive access to the local loop. The strategy is short-sighted, and in the long run is a losing proposition.

PAUL McCLOSKEY EDITOR

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ABP BPA

■ LOCAL COMPETITION

DEVIL IN THE DETAILS

Five reasons local loop competition isn't right around the corner.

Vince Vittore
Associate Editor

Competitors to local exchange carriers (LECs) operate more than 500 networks around the country and are expected to earn more than $1.2 billion in revenues by yearend. So competition for the local loop is here, right? Wrong.

"We could get every regulatory requirement we want, but we could be sitting in our graves waiting for the RBOCs to implement all the changes," says Tom Morrow, president of Time Warner Telecommunications.

If history teaches us anything, hashing out the details of local competition—interconnection, local number portability, reciprocal compensation, etc.—will make the last three years of regulatory fights look like a picnic.

By the numbers, competitors have a long way to go—despite cries to the contrary from LECs who still control about 99% of the $90 billion local exchange market. Numbers aside, there are five major reasons why RBOCs and major Independents will continue to dominate local switched services.

1. INTERCONNECTION WILL BE MORE DIFFICULT THAN ANTICIPATED.

Interconnection itself is not a major technical feat, though there are some bugs to work out, according to those in the trenches. The biggest obstacle is negotiating details such as collocation, unbundling, reciprocal compensation and, most importantly, pricing. "We still don't have permanent interconnection standards or processes, and it doesn't look like we're going to get them soon," says Heather Gold, president of the Association for Local Telecommunications Services (ALTs), which lobbies for competitors on Capitol Hill.

At its most basic level, interconnection means different things to different LECs. Frontier Corp. has unbundled just about every portion of its local loop. At the opposite end of the spectrum, U S West has unbundled its loops in two sections—between the end office and the tandem, and the end office and the customer location, says Mark Reynolds, U S West director-interconnect services. "That's just about as far as anybody would need to go. It's very costly to unbundle a highly integrated network. But we're not opposed to unbundling."

Competitors disagree and want all LECs to follow Frontier's model in Rochester.

More contentious is the pricing issue, specifically how LECs price interconnection services. Competitors charge that most arrangements proposed by incumbents don't allow enough margin to make competition economically possible. Additionally, competitors claim they are paying for inefficiencies of the RBOC network and could end up paying more for the piece parts than for the whole system. "It's a great way to hide the cost," D. Craig Young, president and COO of Brooks Fiber Properties, says of the current pricing schemes.

Competitors also object to the universal service subsidies wrapped into interconnect charges and want a separate mechanism for funding the program.

LECs respond by saying competitors want pricing far below cost and claim pricing is based on interconnection rates given to interexchange carriers. Additionally, universal service subsidies must be included until competitors begin serving the same mix of residential and business subscribers as LECs, says Reynolds, noting about 75% of U S West's lines operate at below-cost rates. "If I were an interconnector, I'd buck [the subsidies] too. But it's kind of like your dues to be in this type of business."

There has been talk at the federal level of requiring LECs to sell interconnection at cost. But some competitors fear the mandate could apply to their interconnect prices with IXCs. "We don't want to put all our eggs in one basket," says Darryl Ferguson, president of Citizens Utilities, which owns Electric Lightwave Inc (ELI). "As much as you'd like to cut a deal with

continued on page 32

LOCAL COMPETITION

continued from page ***30***

the large IXCs, you have to ask yourself what their intentions are two or three years down the road."

2. LOCAL NUMBER PORTABILITY IS IN ITS INFANCY.

Number portability is on the fast track, but even its proponents say it will be a few years before a real solution is ready. And once technical specifications are completed, the big issue will be deciding who pays for it.

The Illinois Number Portability Task Force, which chose a long-term solution from AT&T, and a trial in Washington have proven a database architecture can work. But several peripheral issues will take months and perhaps years to hammer out. First and foremost, who administers the system?

Bellcore, which heretofore has administered the North American Numbering Plan, is not acceptable to competitors because of its RBOC heritage. Finding a "neutral third party" will take months, and transitioning could take years. And if regional databases are the preferred solution, a national administrator may not work.

Secondly, who pays for the databases and links to carriers? "It's certainly not the obligation of all of us to pay 100% of number portability," says Time Warner's Morrow. "If we're not careful, we'll find ourselves paying for the LECs' AIN under the guise of number portability."

The goal is to work out a cost-share arrangement, something few are exploring at this point. Proposed federal legislation leaves much of the detail work to the FCC, which could be stripped to the bone by cost-cutting measures.

"I would think we're two years away" from a real number portability solution, says Reynolds.

3. BACK OFFICE INTEGRATION WILL TAKE MORE RESOURCES THAN COMPETITORS ANTICIPATE.

Almost a year after Frontier opened its local loop to competitors, newcomers are finding that connecting switches is the easy part.

"The back office stuff was very difficult. That absorbs an enormous amount of resources," says Morrow. If competitors aren't careful, they could become "victims of the problems telcos have with back office systems."

For real competition to occur, multiple facilities-based providers must offer a full slate of switched services. "If you don't offer end-to-end service sets, it's going to be very difficult to compete," says Young. And that will require integrated support systems.

"I think what we've done as an industry is we've underestimated the task," adds Ferguson. "We've underestimated the resources it takes to provide basic service."

4. STATES AND MUNICIPALITIES WILL HAVE TROUBLE DEALING WITH COMPETITION.

Most carriers have focused lobbying efforts on state PUCs. But as states with deregulation have discovered, dealing with major telecom issues is much more complex than doling out license plates.

"The stakes were so high, it made compromise extremely difficult," says Stephen Mecham, chairman of the Utah Public Service Commission, which recently completed its rules for local competition.

And even if federal legislation is passed, many tariff details still would fall to state commissions, something few are prepared to handle.

Also, states with little competition may be hurt most as they try to play catch-up, says Joe Miller, former chairman of the Idaho Public Utilities Commission. In many cases, their goal has been preserving universal service and dealing with the RBOCs' desire to escape rate-of-return regulation, something he advocates as key to competition. "The important point is once regulation is not concerned with protecting the incumbents' rate of return, the fundamental change can take place. With universal service taken care of and competition existing, regulation won't have to limit profits."

Municipalities also could play a major role. In addition to charging competitors for access to rights of way, some cities force competitors to go through certification processes different from those at the state level. One city in Utah has even shut out all competitors, hoping to offer municipal telephone service itself (similar to municipal water and sewer service). "Neither the PSC or any other state agency has authority to do anything about it," says Mecham.

"The problem here is cities are hard strapped for cash and look at access as a revenue source," adds Harold Crumpton, a commissioner on the Missouri Public Service Commission.

5. IT'S IN LECs' INTEREST TO DRAG THEIR FEET.

Despite rhetoric to the contrary, LECs continue to slow competition. And until they're given what they want (access into long distance), it benefits them to put up as many roadblocks as possible.

Case in point: Ameritech. The RBOC proclaimed itself a pro-competitive force since introducing its "Customers First" plan two years ago. Competitors tell a different story. "I filed for certification in Ohio and I've lost count on the amount of lawsuits filed [by Ameritech]," says Morrow. "This from a company that advertises itself as pro-competitive. It's all just great PR."

Other RBOCs, particularly U S West and Southwestern Bell, receive more than their share of competitors' criticism. "There's no doubt [U S West Chairman] Dick McCormick made a decision to go slow on competition," says Citizen's Ferguson, adding the RBOC has met only 15% of its interconnection commitments to ELI.

It doesn't have to be this way, though, he concludes. "We have two major obstacles, and both—fair interconnection and pricing—are in the control of LECs. They've got to have the ability and the heart to offer it. It's a real struggle we've got in front of us."

Even regulators are whispering about stall tactics. In Utah, three companies have been authorized to provide competitive services, according to Mecham. In all three cases, U S West appealed because of the way certificates were issued. "I guess in about three years we'll find out who's right, and by that time the game may already have been played." ■

APPENDIX C

Date: Thu Nov 02, 1995 10:25 pm CDT
Source-Date: Thu, 2 Nov 1995 22:06:00 EST
From: nML Comm. Daily
EMS: INTERNET / MCI ID: 376-5414
MBX: COMDAILY@cis.wdc.mci.com

TO: * Peter P. Guggina / MCI ID: 296-1556
Subject: nML Communications Daily 11/3/95 (1 of 2)
Message-Id: 11951103032511/0003765414DC6EM
Source-Msg-Id: <23951103030632/0003054374PJ4EM@MCIMAIL.COM>

FRIDAY, NOVEMBER 3, 1995 VOL. 15, NO. 213

Today:

INDEPENDENTS URGE END OF 'GAMESMANSHIP': Assn. for Local Telecommunications Services opens Palm Springs meeting with call for 7-point plan to open markets. (P. 1)

PBS CONSIDERING DUAL FEED OF PRIME-TIME SHOWS, one with 30-sec. spots and other with 15-sec., to facilitate national underwriting. Many questions still remain; stations asked to comment. (P. 2)

WIRELESS AND RESALE OFFER QUICK MARKET ENTRY: RHCs, CAPs say marriage of facilities-based carriers with wholesale resellers requires unique balancing act. (P. 3)

Long Distance Challenges

INDEPENDENT TELCOS RALLY FOR DEREGULATION AT ANNUAL CONFERENCE

PALM SPRINGS -- Clear implementation plans for local competition are needed immediately, especially opening essential bottleneck facilities, to permit independent telcos entry to market, Assn. for Local Telecommunications Services (ALTS) Pres. Heather Gold declared here at opening of annual conference. She said local telcos are anxious to enter $90-billion market, but have been stymied by incumbent LECs that cite ALTS to justify that markets are open but erect roadblocks to slow competition. "We must put an end to the gamesmanship that has led to the kind of regulatory slow roll experienced in attempting to open the local markets up to this point," Gold said.

Speakers advised telcos they need to be full-service providers, since customers -- especially residential -- are seeking one-stop shopping and won't deal with multiple providers. "You must differentiate yourself," said Linda Lukaszka, mgr., Global Commercial Markets, AT&T. "It's not enough to offer the same as your competition." Companies eyeing long distance entry should consider high start-up costs and infrastructure, said Stu Kolinski, sales consultant who spoke at lunch. '"Be ready to spend some money -- on people, brochures, management," he said, adding that companies should hire managers and sales executives from long distance industry.

Theme for opening session was entry into local market and steps required to move from talk to action. State regulators cited difficulties in working out acceptable ground rules, while some states took brash approach. Stephen Mecham, chmn., Utah PSC, said his state has removed all barriers and he encouraged companies to come in and provide competition to U S West and other LECs. Gold set theme in keynote comments on frustrations and delays independent telcos faced: "On the bright side, the pressure for faster change is mounting."

Gold said local telco opportunities remain "only potential" as efforts by 13 states to pass enabling legislation haven't "yet resulted in the implementation of the elements essential if we are to achieve a truly competitive local marketplace." LECs have gained "unwarranted regulatory relief" by citing "potential for competition," while companies continue to be shut out of markets, she said. ALTS complained that at federal level, LECs have submitted and had rejected 4 sets of tariffs, launched 2 court appeals of FCC decisions and thwarted implementation in many markets. State efforts have been "similarly tortured," she said.

Gold outlined 7 steps required for implementation: (1) Removal of state and local barriers to entry, including administrative barriers. (2) Interconnection and unbundling of essential bottleneck facilities to permit interoperability of competing networks. (3) Rates for each interconnection element offered separately and set at "economic cost." (4) Charges for interconnection "must be imputed to the carrier itself." (5) Nondiscriminatory, reciprocal financial relationships for exchanging local traffic between service providers. (6) Removal of restrictions on resale to eliminate "artificial barriers between services using the same facilities." (7) Ability of customers in all market segments to choose local carrier, which will require "complete restructuring" of universal service fund.

In afternoon sessions, companies were advised that customers have become more demanding in types of services provided and won't accept basic service alone. "Customers want, expect and need enhanced services," Link USA Sr. Vp Kristi Feltz declared. Business and residential customers need "total solutions to give them the answers they want," said Gail Gilbert, mgr., Ericcson end office-tandem business line.

ALTS Notebook...

Explosive growth in switched access and healthy gains in switched service and toll will propel independent telco industry to $20.3-billion annual revenue by 1998, from estimated $1.3 billion this year, Connecticut Research Pres. Richard Tomlinson said. Dedicated access and private line services, which account for most of industry, will grow 2.5% to $1.3 billion and be eclipsed by other enhanced services, he said. "We are poised on the brink of regulatory and market developments which will take us well beyond peripheral competitive sparring and will produce a transition into core competition," Tomlinson said.

Siemens said it's adding full interexchange carrier tandem capability to central office switching system, reflecting increasing competition in IXC and LEC markets. New software will give LECs ability to modify existing switches to provide equal access for long distance carriers. Software will be ready in early 1996, it said.

Phoenix Fiberlink is buying up to $35 million in Siemens equipment, including EWSD digital switch and Siecor fiber, for its Salt Lake City network, which will have 40-mile fiber ring when completed at year-end, companies said. Contract also includes vendor financing for Phoenix.

Resolution Up in Air

PBS CONSIDERING DUAL PROGRAM FEED FOR NATIONAL UNDERWRITING

LEXINGTON, Ky. -- PBS is considering dual feed of prime-time National Programming Service, one with 30-sec. national underwriting spots and one with 15-sec. spots, as solution to dilemma that for years has plagued system, said John Wilson, PBS dir.-scheduling and planning, and Judy Stone, Ala. Public TV (PTV) exec. dir. and member of PBS task force studying national underwriting issue. PBS Pres. Ervin Duggan has said one of his top priorities is achieving minimum number of hours per year when all stations would carry same schedule with same spots, and most agree it would be easy to attract high-paying national program sponsors if they could be assured that underwriting credits, like ads on commercial TV, would reach most markets at same time. Stations, with different underwriting guidelines in each market, haven't been able to agree on how best to accomplish goal.

Task force studying common carriage and underwriting said dual feed would solve stations' biggest problem with national underwriting -- while some use 30 sec. spots, preferring them because they bring in more revenues, and have arranged their schedules to accompany them, others hold fast to 15 sec., contending that 30-sec. spots come too close to advertising and are against their noncommercial nature. In addition, some licensees, especially those associated with educational institutions, have charters that forbid them from airing 30-sec. underwriting credits.

Idea of "variable standard" raises many questions and still has many bugs to be worked out, Wilson said at session at Southern Educational Communications Assn. conference here. For example, any station that now carries 30-sec. credits would be required to receive PBS feed with 30-sec. spots, which means either their programs would have to be shorter or, more likely, they would have to reduce amount of local underwriting to make room for longer PBS credits. Wilson said plan would be to have one 75-sec. feed, consisting of up of two 30-sec. spots and one 15-sec. spot, and another with standard PBS credit pod of spots only up to 15 sec. Wilson said that could mean up to 4 or 5 min. of funding credits at top or bottom of hour, ending previous show and beginning next one. Nothing is set in stone, he said.

Task force hasn't proposed yet who would pay for costly 2nd feed, but one audience member said it should be those using 30-sec. spots since they would be getting more revenue. Not only would feed be expensive (cost hasn't been explored yet), it also would mean double workload for national programmers and producers. Compliance would be monitored only on complaint basis, with as-yet-unspecified sanctions possible if deemed appropriate by peer review board. Wilson said PBS is looking for comments from system on these issues as well as: (1) Acceptability and practicality of dual-feed system. (2) Suggested changes in PBS underwriting guidelines, which PBS plans to overhaul for eventual adoption as system standard.

Task force also hasn't set time line for revising PBS guidelines since much is dependent on any action Congress takes to change its underwriting requirements. Some proposals on Capitol Hill would loosen guidelines and permit more enhanced underwriting, which some in industry fear is first step toward commercialism. Still others say stations should be allowed to experiment with longer and more detailed spots, including attributing sponsorship to product rather than company, showing consumers using products, etc. But there's some urgency, Wilson said, since goal is not to lose any more underwriters, which often are confused about differing policies in different markets, and to attract new underwriters in time when non-govt. funding is crucial. "The sooner the better," he said.

Utilities Seen as Players

LOCAL TELCOS URGED TO THINK WIRELESS AND RESALE FOR QUICK ENTRY

PALM SPRINGS -- Wireless and resale represent quick way for telcos to compete in local market, but industry analysts and executives at conference here Thurs. said neither option guarantees success. Power companies also are expected to become players, one speaker said. Relations between LECs and competitors remain major sticking point in winning quick entry and early benefits of resale agreements, speakers said. "You will see many different types of permutations and combinations of alternatives in use any one time," said Jacob Goldberg, Nynex vp-NET-I marketing & sales. Wireless quality and reliability have improved considerably in last few years, making it more viable bypass alternative for local carriers, Yankee Group analyst Mark Lowenstein said.

Panelists discussed resale options before announcement by Ameritech and U.S. Network Corp. of first RHC-competitive access provider (CAP) agreement for resale of wide array of LEC services. Goldberg said any company seeking entry into telecom market will have to enter local exchange market, and resale agreements represent easiest and quickest approach. "Challenges are going to be extraordinary. They already are extraordinary." Nynex already has more than 25 switches with competitive access, providing 15,000 voice-grade trunks linking switches with other companies and more than 100 NXX numbers have been assigned to other companies.

Electric utilities also represent potential competitor for incumbent LECs, given widespread right-of-way and right-of-entry presence in service territory. In addition, they have more secure fiber-cable routes, since few contractors want to dig up buried electric cable, said Gary Bunjer, pres., ICG Access Services in Colo. "Electric utilities have come on strong," he said. In next 6-12 months, he said, they will start to become larger players in telecom services, especially as markets are deregulated.

Panelists couldn't answer audience questions about profit margin from local resale. James Hogan, Teleport Communications Group (TCG) vp-sales, drew big laugh when he deferred to Goldberg, whose company sets rates in N.Y. where TCG is providing competition. Goldberg said market remains too young to set rates, and each case must be negotiated on individual basis. "The market is going to get ugly," Bunjer said, as long as companies are negotiating for basic dial tone services that have very narrow margins. Companies providing value-added services are likely to improve on profitability from resale arrangements, he said.

PCS expansion and upcoming auctions for Block C and future blocks are driving improvements in quality and price for wireless, making it viable alternative for competition, Lowenstein said. Recent surveys show overwhelming interest in mobile communications by noncellular owners, he said, which creates opportunity for CAPs to enter business. PCS auctions have effect of greatly expanding wireless network capacity beyond current limitations, possibly eliminating overload situation in major cities such as N.Y. and L.A., he said. Wireless can allow companies to "be their own access provider," he said. Yankee Group forecasts penetration of 35%-40% by 2004, vs. 11%-12% currently, growing to $60-billion business from $15-$18 billion.

APPENDIX D

Date: Mon Nov 06, 1995 7:10 pm CDT
Source-Date: Mon, 6 Nov 1995 18:57:00 EST
From: nML Comm. Daily
EMS: INTERNET / MCI ID: 376-5414
MBX: COMDAILY@cis.wdc.mci.com

TO: * Peter P. Guggina / MCI ID: 296-1556
Subject: nML Communications Daily 11/7/95 (1 of 2)
Message-Id: 53951107001035/0003765414DC3EM
Source-Msg-Id: <04951106235740/0003054374PJ2EM@MCIMAIL.COM>

TUESDAY, NOVEMBER 7, 1995 VOL. 15, NO. 215

Today:

TELCOS TOLD THEY CAN'T FIGHT COMPETITION: Industry executives say at USTA that future holds opportunity and problems but it won't do any good to circle wagons. USTA Convention Notebook. (P. 1)

USTA KICKS OFF CONVENTION WITH 'REGULATORY SUNDAY' featuring Keeney's first speech as Common Carrier Bureau chief. Panel sessions stress changes in industry rules. (P. 2)

ADVISORY GROUP DRAFT RECOMMENDS APPROVING HDTV STANDARD: Technical Subgroup says Grand Alliance system meets requirements. Little opposition likely Nov. 28. Next step up to FCC. (P. 3)

At USTA Convention

TELCO EXECUTIVES SEE FUTURE OF OPPORTUNITIES AND PROBLEMS

ORLANDO -- Addressing first general session of USTA convention here Mon., telco executives from big, medium and small companies sent message: Don't fight competition and other changes in industry because it won't do any good. Better course is to take advantage of changing rules by diversifying into new businesses.

"This is not the time to circle the wagons," BellSouth Chmn. John Clendenin said in keynote speech. "It would be futile anyway." Telcos can can "change or be left behind. That's all there is to it." Competitors will "quickly go after the 20% of customers who account for 80% of revenues," he said. "It will happen sooner than we think. At BellSouth, we're going to lose customers in our core businesses. But we will have latitude to add customers in new businesses."

Legislative and regulatory changes will bring competition and "change the way you do business," said USTA Chmn.-elect Bob Boaldin, who's pres. of Elkhart (Kan.) Telephone. "Some of your largest customers will become your competitors but you do not have the option to do nothing," he said. On other hand, telcos also will have new opportunities, Boaldin said: "You and I may compete in PCS, cellular, maybe something we don't even know about yet. Companies will merge. There will be plenty of opportunities. The one problem we must overcome is mindset... The prospect of a totally new landscape may be frightening but we have tangible assets in our facilities-based networks and intangible assets in goodwill in the community."

Said USTA Chmn. Dan Miglio, chmn. of Southern New England Telephone: "We need to get our house in order, to ask whether we're ready for competition with up-to-date networks, training, customer service. Are we diversified or are all our eggs in the same historic basic services basket?" Most of all, he said: "We need to say our prayers every night." Similar message was imparted by USTA officials at last year's convention.

Noting convention's theme, "Dimensions of New Reality," Clendenin said reality includes: (1) Competition in local exchange brought about by technological and regulatory changes. (2) Marketplace driven by customers instead of regulators. (3) Technology creating competitors independent of local exchange such as cable and satellite. (4) One-stop shopping for everything -- local service, entertainment, toll, paging and Internet access -- in "friendly packages convenient for customers."

BellSouth has been "aggressively advocating opening the local loop" before state commissions but states can only do so much, Clendinin said. "They can't bring down the artificial walls between video and telephone, long distance and local service. Only federal legislation and the courts can do that, and those walls need to come down." Most members of Congress appreciate need for competition but "it should be real competition, not unrealistic resale" that forces telephone companies to "bankroll their competitors," he said.

USTA Pres. Roy Neel said pending legislation has "deep potholes" in areas of universal service, resale and role of govt. in MFJ relief, but "the benefits are enormous" in new jobs and improvements to economy. Similar theme was sounded by Gary McBee, coordinator of Alliance for Competitive Communications, at Mon. morning congressional breakfast. Although industry favors pending legislation, congressional misunderstanding about telco position on resale is major problem as conference committee works out agreement on bill, he said. Issue is what price telcos must set for reselling their network services to competitors. Offering reduction in retail price -- one way to define wholesale price -- doesn't work, McBee said, since retail price is below cost for most telcos. That's because of complex subsidy system in telephone business. Cost can be twice amount charged to consumer, he said.

Alltel Senior Vp Diane Smith said benefits of legislation are many, including guaranteed entry into cable and tariff flexibility that she defined as "one of the most valuable things you can get." Among risks: (1) "Elimination of barriers of entry to our business," perhaps without equally opening other businesses to telco entry. (2) Interconnection requirements that are like "ordering dinner at a restaurant and getting a check for the fork, the knife, the water glass and the lettuce on the salad." That means more administrative burdens for small companies, she said. (3) Resale requirements and accompanying administrative requirements. "Everyone needs to know your costs and prices." Neither House nor Senate bill is perfect from telco perspective, she said. She said one of biggest challenges is to convince lawmakers that new competitors aren't tiny upstart companies. "We're talking about Time Warner, AT&T and MCI."

Asked whether Congress will act soon on final passage of legislation, McBee said 2 things lead him to think passage will come before end of year: (1) There's a lot of congressional interest in legislation and there are consumer benefits. (2) "They're sick of us" on Hill. "You can only put up with Bell lobbyists, or mid- and small company lobbyists, for so long."

USTA Convention Notebook...

Sounding now-familiar theme of major reform of telephony regulation, FCC Chmn. Hundt addressed USTA convention Mon. via videotape because he was in Brazil at another conference. Calling for access charge reform, he said carrier common line (CCL) charge results in "high-volume users' subsidizing low-volume users."

APPENDIX E